IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 831 of 1998

in

CRIMINAL MISC.APPLICATIONNo 3340 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

CHANDRAKANT DALICHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR SP DAVE ADDL. PP for Respondent No. 1

MR MR GEHANI for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 24/09/98

ORAL JUDGEMENT

This application is filed under Article 226 and/or 227 of the Constitution of India as well as

section 482 of the Code of Criminal Procedure for quashing and setting aside the criminal complaint being criminal case No. 349 of 1997 pending in the Court of the learned Additional Chief Metropolitan Magistrate at Ahmedabad.

2. Few facts may be stated. It is the case of the opponents that the petitioner was residing in India during the period 1990-94. He received payments of Rs.7 crores in addition to other payments from various persons other than the authorized dealers without any general or special exemption granted by the Reserve Bank of India or on behalf of Raju Shah who was at that time in the United States of America. On receipt of such information, on 25th March, 1998, a search was carried out at the residential premises of the petitioner by the officers of the Enforcement Directorate (FERA). At that time, certain incriminating documents, revealing hawala payments made and received in India ,were found. Those documents were seized. Therafter, statement of the petitioner was recorded. The opponents had, considering the materials placed before them, a reason to believe that the petitioner was involved in Hawala transactions where foreign exchange amounting to $ 875869 was involved and that the petitioner had dealings in this respect without any general or special exemption from the Reserve Bank of India. The petitioner, thus, contravened the provisions of section 9(b) (1)(d) and section 9(1)(f)(i) punishable under section 56(1(ii) of the Foreign Exchange Regulation Act. A complaint then came to be filed in the Court of the learned Metropolitan Magistrate, Ahmedabad which is registered as criminal case No. 349 of 1997 against the petitioner. The petitioner, after being served with the summons, appeared and going through the papers, found that no case was made out to proceed against him and that it was a case of discharge. The petitioner, therefore, filed an application at Exh. 43 before the Court of the learned Additional Chief Metropolitan Magistrate at Ahmedabad praying for his discharge under section 245 (2) of the Code of Criminal Procedure which came to be rejected on 6th August, 1998. Thereafter, present application has been filed for quashing the proceeding namely criminal case No. 349 of 1997 at present pending against the petitioner in the Court of the learned Additional Chief Metropolitan Magistrate at Ahmedabad on various grounds.

3. The learned advocates representating the petitioner has made submissions and in reply, those submissions are refuted by the learned advocate Mr. Gehani appearing on behalf of opponent No. 2 and Mr.S.

P. Dave, learned A.P.P. for the State of Gujarat. Before I proceed, it may be stated that it is not necessary to dwell upon every contention raised on behalf of the parties because after I made querry, learned advocates representing the parties have tapered of their arguments confining to the only ground qua effect of the departmental proceeding and the order passed therein. I would, therefore, confine to the only point going to the root for deciding this petition.

4. It is contended on behalf of the petitioner that simultaneously departmental proceedings namely adjudication proceedings were also initiated against the petitioner and in that proceedings, the Special Director conducting the inquiry passed an order on 28th August, 1997 dropping the proceedings holding that the nexus between the charges and the evidence in support of the impugned show cause notice has not been established with any clinching and unimpeachable corroboration. When that is the case, it is further contended that it would be of no meaning to proceed with the complaint, because ultimately the result would be the same as the respondents would not be able to prove the charge since the whole case clinches upon the materials already placed before the adjudicating authority, and no others.

5. Mr. Gehani, learned advocate appearing for opponent No. 2, in reply to such contention, has drawn my attention to the decision of the High Court of Bombay in the case of Kamaluddin Mohd. Amin Siddique & Anr. versus N.F.Chawda & Anr. reported in 1989(3) Crimes pg.414 wherein it is laid down that the principle of double jeopardy would not apply to the prosecution under the Customs Act albit the fact that the competent authority after holding the enquiry proceedings exonerated the accused. What is sought to be impressed by Mr. Gehani is that even if after holding the departmental proceedings, the petitioner is exonerated, it would not in any way come in the way of the respondent No. 2 to proceed with the complaint lodged before the learned Additional Chief Metropolitan Magistrate as both are the distinct proceedings, and would not be depending upon other, or say the result of the one would not affect the result in another proceeding.

6. The submissions made on behalf of the petitioner cannot lightly be swept under the carpet because on the point raised, the Supreme Court has made the law clear in the case of P.S.Rajya versus State of Bihar reported in 1996 Supreme Court Cases (Cri) 897 laying down that the standard of proof required to be establish the guilt in

criminal case is far higher than the standard of proof required to be established in the departmental proceedings. If the charge in the case before the Court and in the departmental proceedings is one and the same,the findings rendered in the departmental proceedings would have impact over the proceedings in the criminal court. It is also further held and observed that the same charge on the strength of the materials in the departmental proceedings is not established, on the basis of the same material, it would not be possible for the prosecution to establish the charge in the crinminal case, as in the criminal case before the criminal court, standards of proof that is required is stricter than what is required in the departmental inquiry or the proceedings. In such case, it would be futile to proceed with the criminal case and have the same result i.e. acquittal. In that case, therefore, the Supreme Court quashed the proceedings. It may be stated at this stage that the decision of the Bombay High Court cited by Mr. Gehani, learned advocate representing the opponent No. 2 is running counter to the decision of the Hon'ble Supreme Court. I may mention that I am not bound to follow the decision of the Bombay High Court. I may also state with utmost respect that I do not agree with the decision rendered by the Bombay High Court. It should also be mentioned that in view of Article 141 of the Constitution of India, decision rendered by the Supreme Court shall prevail which is also binding. In view of the decision of the Supreme Court, the decision of the Bombay High Court can be said to have been impliedly over ruled. Under such circumstances, nothing can be concluded on the basis of the decision of the Bombay High Court. In view of the above referred decision rendered of the Supreme Court, when in this case, the charge and the materials to prove the charge are the same which were in the departmental proceedings, and in departmental proceedings, when the petitioner is exonerated, the criminal case filed will serve no purpose. To proceed with the same would be nothing but unproductive exercise. The proceeding namely Criminal Case No. 349 of 1997 at present pending in the Court of the learned Additional Chief Metropolitan Magistrate is, therefore, required to be quashed and set aside.

7. Facing with such situation, learned advocate Mr. Gehani, relying upon the decision rendered in the case of Haji Abdulla Haji Ibrahim Mandhra and another versus The Superintendent of Customs (P.I.) Bhuj and another, reported in 1992 Cri. L.J.2800, contends that it is open to the department to place reliance upon the confessional statement made by the accused in departmental proceedings

in criminal case and that would tilt in favour of the prosecution. Owing to the confessional statement, to proceed with criminal case would not amount to futile exercise.

8. The contention cannot be accepted though about the principles laid down in that decision there cannot have any difference of opinion. The copy of the order passed in the departmental proceedings is produced at page 25 of the record. The adjudicating authority has observed therein that though the department has denied the allegations made by the petitioner-accused about the statement having been recorded by coercion and duress, the circumstances prevailing at the relevant period from 26th March, 1994 to 28th March, 1998 when the statement was recorded and subsequent medical examination at the instance of the Court as well medical report showing prolonged hospitalization of the accused for 11 days in the jail hospital immediately after his production for remand before the Court definitely indicate that all was not well with the manner in which the interrogation of the accused was carried out. Later on, it is held that the testimony of the jail doctor coupled with other facts and circumstances immediately before arrest of the accused have been highlighted and substantiated by the accused to submit that the statement had been obtained from him by employing unfair and unlawful means. In such a case, the statement of the accused obviously has no evidentiary value. Consequently, it is also held that the charge in the case being based on the retracted statement which turns out to be the involuntary confession is not tenable and cannot be allowed to sustain. Ultimately the accused came to be discharged and the proceedings were dropped. Thus, in the departmental proceedings also, it is made clear holding that the confessional statement recorded was not voluntary but was taken by employing duress or coercion. In law, confessional statement can be acted only if it is found to have been made voluntarily or by free will. Here, in this case, when that is not the case, in view of the observations made in the order passed in the departmental proceedings, the confessional statement being involuntary will be of no help to the respondents, and the case will not result in conviction. The contention, therefore, fails. Under the circumstances, to keep the complaint i.e. criminal case alive and allow the same to proceed to its natural end would be nothing but futile exercise and unjust harrassment to the petitioner, and abuse of court's process.

9. For the aforesaid reasons, there is no

justifiable reason to proceed with the complaint. The same is, therefore, required to be quashed and set aside. In the result, this application is allowed. The Criminal Case No. 349 of 1997 pending on the files of the Court of the learned Additional Chief Metropolitan Magistrate, Ahmedabad is hereby quashed and set aside. Rule is accordingly made absolute.

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